Supreme Court, U.S.
FILED

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No. 99 151 MAY 20 1999

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In the
Supreme Court of the United States

JOHN KOJO MENSAH,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari
to the
United States Court of Appeals for the
Seventh District, Chicago

PETITION FOR WRIT OF CERTIORARI

JOHN KOJO MENSAH
Pro se Petitioner
816 1/2 Fulton Street
Elkhart, IN 46514
Tel-Fax: (219) 296-6648

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Questions Presented

1. Whether petitioner is entitled to a judicial review in the meaning of Administrative Procedure Act?

2. Whether the doctrine of "res judicata" is applicable in this scenario where petitioner was denied judicial review or de novo hearing at the U.S. District Court under the Administrative Procedure act, (A.P.A.)?

3. Whether the outcome of this case involves a significant national interest, the principles of liberty and freedom; and threaten the lives of hundreds of others similarly harmed by the abuse of power within intelligent services of the United States, if a Writ of Certiorari is not granted?

LIST OF PARTIES TO PROCEEDINGS BEFORE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

1. Carol Jennifer, I.N.S. District Director (Detroit), and her successor.

2. United States Immigration and Naturalization Service, (I.N.S.).

3. George Tenet, Director Central Intelligence Agency, (C.I.A.) and his successor.

4. United States Central Intelligence Agency, (C.I.A.).

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PETITION FOR A WRIT OF CERTIORARI

Pro se petitioner, John Kojo Mensah respectfully prays that a Writ of Certiorari issue to review the Judgement and Opinion of the United States Court of Appeals for the Seventh Circuit entered on January 11, 1999.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY THE COURTS

1. John Kojo Mensah v. United States Of America, No. 98-3514, Order Den. Reh. En Banc (7th Cir. February 22, 1999) (unpublished)

2. John Kojo Mensah v. United States Of America, No. 98-3514, Granted Suggestion for Reh. (7th Cir. February 11, 1999) (unpublished)

3. John Kojo Mensah v. United States Of America, No. 98-3514, Order Affirming Dismissal. (N. D. 7th January 11, 1999) (unpublished)

4. John Kojo Mensah v. United States Of America, No. 3:98-CV-360RM, Order of Dismissal, judgement in civil case (N. D. IN. August 17, 1998) (unpublished)

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

Invoking federal jurisdiction under 28 USC § 1331, Petitioner brought this suit in the Northern District of Indiana. Petitioner seeks a review of U.S. Court of Appeals Order of January 11, 1999 which affirmed U.S. District order (August 22, 1998), denying petitioner the right to judicial review and a stay of I.N.S.; federal agency action for the reason that agency's actions were capricious; constitute abuse of discretion and acted not in accordance with law.

Petitioner sought a rehearing with suggestion for rehearing *enbanc*, which was denied in an Order entered on February 22, 1999. Pursuant to Supreme Court Rule 13.1 and 13.3, this Petition has been filed within

ninety (90) days of the denial of hearing; and subsequently granted extension of time of 60 days as of May 24, 1999. Petitioner seeks a Writ of Certiorari on U.S. Court of Appeals ruling under the doctrine "res judicata" in that such a doctrine is not applicable in this instance. The jurisdiction of this court to review this petition for a Writ of Certiorari is invoked pursuant to 28 USC § 1254 (1), and 2101; also 28 USC § 1251.

Pursuant to Supreme Court Rule 29.4 (a) service is made on the Solicitor General Of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001, the I.N.S. district director and the director of C.I.A.

PERTINENT CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

1. Administrative Procedure Act, (A.P.A.) (5 USC § 702).

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or officer, or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.

In any such action, the United States may be named, and a judgement or decree, may be entered against the United States: Provided that any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.

2. First Amendment, United States Constitution

Congress shall make no law respecting an establishment of religion, prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

3. Fifth Amendment, United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

4. United States Constitution Art 3, § 2, cl. 1

Section 2. The judicial Power shall extend to all cases, in Law and Equity, arising under this constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-to all cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more states;—between a State and Citizens of another State;—between Citizens of different states;—between Citizens of the same state claiming Lands under Grants of different states and between a state, or the citizens thereof and foreign states, citizens or subjects.

5. Uniform Child Custody Jurisdiction Act (UCCJA), Full Faith and Credit Clause.

(a) The appropriate authorities of every state shall enforce according to its terms, and shall not modify except as provided in subsequent (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

6. Fourteenth Amendment, Section 1, United States Constitution:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner alleges that he and his children have suffered and continue to suffer adversely from I.N.S. and C.I.A. agency sanctioned legal wrong involving but not limited to the following:

1. Sanctioned a campaign of terror and rights deprivation including the use of agency orchestrated death threats, thermal-imaging camera for around the clock surveillance while in his home; laying siege to our homes these past 14 years; 24-hour stalking; acts of entrapment; I.N.S. operatives orchestrated the death of petitioner's wife in a car/train crush to enable the respondent agency to relocate her elsewhere under false identity as in a "witness" protection program. This was done to avoid a disclosure of the 6 years of severe acts of sodomy and ritualistic sexual acts carried out by I.N.S. and C.I.A. operatives in conspiracy with petitioner's wife while he and his minor children lay sedated in the same room.

2. Other acts of persecution, terror and rights deprivation included; invasion of privacy involving 14 years of wire-tapping, bugging devises; numerous incidents of illegal search and seizure; orchestrated social isolation; banishment and ostracism; marital deprivation/loss of consortium; daily acts of inducement; use of noise-making devises planted in petitioner's home to facilitate sleep-deprivation, and inflict irreparable mental and emotional injuries; economic and financial deprivation; educational as well as religious deprivation and persecution.

These agency sanctioned acts of deprivation constitute violations of the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment of the United States Constitution including the First and Fourth Amendment Protection Rights; the Thirteenth Amendment for Equal Rights including the Parental kidnapping Prevention Act, (P.K.P.A.), and the Full Faith and Credit Clause of the Uniform Child Custody Jurisdiction Act, (U.C.C.J.A). Such violations occurred when agency operatives induced petitioners "late" wife to kidnap his minor children to Michigan prior to an agency orchestrated death; and then induced Family Court Judge Thomas Schumaker to use a bogus petition and a fraudulent judicial proceeding to deprive petitioner the right to contact and custody of his children.

Petitioner filed this cause of action against the United States Of America pursuant to 5 USCA § 701 to 706 under the Administrative Procedure Act (A.P.A.) and alleged that the respondent and its Immigration and Naturalization Services (I.N.S.); the district director of the Immigration and Naturalization Service (I.N.S., Detroit), Carol Jennifer; and her predecessor in collaboration with the Central Intelligence Agency, (C.I.A.) and the C.I.A. director George Tenet have sanctioned, ordered and engaged in a legal wrong in the form of a conspiracy under color of law to the deprivatio and violation of rights and privileges of this petitioner and his minor children guaranteed by the constitution of the United States.

The law states that judicial review will not be cut off. It is denial of the first complaint that led to the subsequent action. This is petitioner's second *pro se* action under A.P.A. seeking judicial review for injunctive relief; and does not constitute multiplicity. Under § 706 (A.P.A.), the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action . . . by its dismissal the district court failed to administer the law.

According to A.P.A. there is a presumption of review except to the extent that statute preclude judicial review, or agency action is committed to agency discretion by law; which is not the case in this scenario. Natural Resources Defense Council, Inc. v. Securities and Exchange Commission, CADC 1979, 606 F. 2d 1031, 196 U.S. App. D.C. 124.

The district court's dismissal order also preclude petitioner from filing any further cases against the respondent, while he continue to be besieged in his home and terrorized around the clock; and plagued in isolation, banishment, employment deprivation; his children continue to be deprived of contact with their father. The district court erred in denying petitioner the right to judicial review as mandated by the Administrative Procedure Act, (A.P.A.).

Also, the Court of Appeal's dismissal under "res judicata" is not applicable in this instance because the original suit was dismissed for not stating a claim while the law under Administrative Procedure Act clearly grants the right to judicial review. In the absence of the judicial review sought in the form of a de novo hearing, the merits of petitioner's cause were not at issue under the failure to state a claim dismissal from the district court. In view of this, the Court of Appeals erred in dismissing the case under such inapplicable doctrine.

In accordance with section 702 petitioner has a right to judicial review in that he and his children suffered and continue to suffer adversely as a result of the said agency action, and that his "injury-in fact" and its interest are arguably within the zone of interests intended to be protected or regulated by relevant statute, or constitutional guarantee as defined by section 704 of this title as reviewable actions.

I.N.S. is an agency according to the definition of section 701, and that the term agency-action, order, sanction, rule, have meaning given them by section 551 of this title; and that statute do not preclude judicial review sought, and that the alleged agency action is not committed to agency discretion by law.

Under section 703 of this title, the district court has jurisdiction for review of such agency action and legal wrong; and that petitioner is entitled to relief in the form of a Stay of Agency Action (Preliminary Injunction) pending review as per section 705. Also, the scope of review sought is within meaning of section 706 of this title in that the alleged agency action is arbitrary, capricious, and constitute an abuse of discretion, otherwise not in accordance with law. National Indus. Sabd Ass'n v. Marshall, CA 1979, 601 F.2d 689.

Administrative remedy not required under A.P.A. although years of extensive efforts were made while the agency (I.N.S.) denied such activity thus indicating in essence that there was no rational basis for its action in the meaning of A.P.A. Dallas City Packaging, Inc. v. Butz, D.C. Tex. 1976, 411 F.Supp. 1338.

REASONS FOR GRANTING THE WRIT

1. Whether Appellant is Entitled to Judicial Review in the Meaning of the Administrative Procedure Act, A.P.A.?

Petitioner state here that he is a person suffering legal wrong because of agency action, and that he is adversely affected or aggrieved by agency action within the meaning of federal statutes noted above, as such he is entitled to judicial review thereof under 5 USC § 702. See Coeur D'Alene Lake v. Kiebert, D. Idaho 1992, 790 F. Supp. 998. Such judicial review is presumed under § 702. Also, Sabin v. Butz, CA 10 (Colo.) 1975, 515 F.2d 1061, this indicate that the district court erred in dismissing his case.

Petitioner also state that he satisfies the threshold requirement of standing under USC Const. Art. 3, § 2, cl. 1., and that such constitutional prerequisite are met in his complaint. In determining whether petitioner have standing under A.P.A. to contest actions of federal agencies, court begins with presumption that parties who satisfy requirements of Article III have standing to contest such actions. To overcome such presumption, petitioner allege that his injury in fact, economic and otherwise noted above has interest to be protected which is arguably within "zone of interests" protected or regulated by statutes in question. City of Camden v. Plotkin, DCNJ 1978, 466 F.Supp. 44

Petitioner further assert that his injury in fact falls with in the zone of interest with "plausible relationship" to concerns as determined by relevant legislation, that actually motivated congress to take legislative action. City of Milwaukee v. Block, CA 7 (Wis.) 1987, 823 F. 2d 1158, on remand 688 F. Supp. 479. According to Preston v. Heckler, CA 9 (Alaska) 1984 734 F. 2d 1359, plaintiff who meets standing test in cases arising under this section satisfies minimum requirements under USCA Const. art. 3 that party who invokes court's authority show that he personally suffered some actual or threatened injury as a result of putatively illegal conduct of defendant and that such injury fairly can be traced to challenged action and is likely to be redressed by decision.

For purpose of establishing standing under this section, required injury in fact need not be substantial to support federal court jurisdiction over challenge to agency action, an identifiable trifle will suffice. Public Citizen v. Lockheed Aircraft Corp., C.A.D.C. 1977, 565 F. 2d 708, 184 US App. DC 133. Review is available under this section only if preliminary or procedural agency action threatens so irreparable on injury as to justify interlocutory resort to correct judicial process. This is consistent to petitioner's complaint. Lyons v Weinberger, D.C.N.Y. 1974, 374, 376 F. Supp. 248. Also economic injury such as reported in plaintiff's complaint is clearly a legally cognizable injury for purposes of standing to seek judicial review of administrative action. Tax Analysts and Advocates v. Simon, D.C.D.C. 1975, 390 F. Supp. 927

The court also found in Lower Moreland Homeowners' Assoc. v. Dept of Housing and Urban Dev., DC Pa 1979, 479 F. Supp. 886 that interests which are sufficient to satisfy the standing requirement of this section may take a variety of forms; for example, injury to an economic interest is adequate and the basis for standing may also be found in noneconomic values such as aesthetic, conservational, recreational or religious interest, including banishment from such fellowship and membership as alleged by this petitioner. Also, ...crucial factor is whether plaintiff alleged actual injury in fact, and court should find that standing exists where such injury is alleged, despite attenuated line of causation from the agency action to injury and whether or not appellant will be able to prove ultimately that he has in fact suffered alleged injury. See, American Horse Protection Ass'n, Inc. v. Frizzell, DC Nev. 1975, 403 F. Supp. 1206.

There is no evidence that congress intended to preclude parties such as this petitioner from bringing suit. Banks v. Sec. of Indiana Family and Social Services Admin., C.A.7 (Ind.) 1993, 997 F. 2d 231. Judicial review as in this scenario need not be expressly authorized; availability of judicial review is presumed unless clear evidence precludes it. Legal Aid Soc. of Alemanda County v. Brennan, CA 9 (Cal.) 1979, 608 F. 2d 1319, certiorari denied 100 S. Ct 3010, 447 US 921, 65 L. Ed.2d 1112.

The jurisdictional provision of this section applies to governmental

agencies such as the I.N.S. and the C.I.A., and to the jurisdiction of the district court to review such action. Sciolino v. Marine Midland Bank-Western, D.C.N.Y. 1979, 463 F. Supp. 128. See also, Arrow Meat Co. v. Freeman, DC Or. 1966, 261 F.Supp. 622.

Under section 1361 of title 28, providing for action in the nature of mandamus, and this chapter 5 USC § 701 and § 702 provide relief only where a clear duty is owed the petitioner if there is an abuse of discretion such as in this scenario involving 13 years of constitutional right deprivation, causing severe injuries. Grant v. Hogan, CA 3 (Pa.) 1974, 505 F. 2d 1220.

2. Whether the doctrine of "res judicata" is applicable in this instance where petitioner was denied the right to judicial review or de novo hearing at the U.S. District Court under the Administrative Procedure Act?

There are two significant factors relevant to this court: (1) There is a conflict between the decision of the Court of Appeals under the doctrine of res judicata and the ruling of other appellate courts. (2) The statute under A.P.A. clearly grants the right to judicial review, argument emphasized in question one above; and lower courts have consistently recognized that fact since the purpose of judicial review under A.P.A. is for the court to ascertain whether agency action such as in this scenario has been capricious, constitute abuse of discretion and not according to law; and if it has been, for the court to stay agency action.

The doctrine of res judicata and collateral estopel is not applicable in this instant due to the one general limitation the court has repeatedly recognized; that the concept cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case, Montana v. United States, *supra*; 440 U.S. at 153, 162; Blonder-Tongue Laboratories, Inc v. University of Illinois Foundation, *supra*, at 402 U.S. 326-329

A dismissal of petitioner's original suit under 42 USC § 1983 for se-

vere and extensive constitutional rights violation causing irreparable injuries on the grounds of not stating a claim does not reflect the merits of the case neither does it constitute a "full and fair opportunity" to litigate. A ruling under res judicata must reflect the merits of the case; the district court's dismissal in this instance did not reflect the merits therefore the doctrine is not applicable here. Petitioner was deprived opportunity to use evidence to proof his case and was also denied any right to a judicial review or de novo hearing. Even when this petitioner filed a second suit under the Administrative Procedure Act, 5 USC § 702, the district court still denied him the right to judicial review or de novo hearing as mandated by A.P.A.; one who has been injured by agency action is presumptively entitled to judicial review, see City of Rochester v. Bond.

Furthermore for the court to apply preclusion under the doctrine of res judicata the following factors must be considered: (I) whether petitioner chose the forum in the first action; (ii) whether the court failed to grasp technical litigation theories in the first action; (iii) whether the petitioner was deprived the use of evidence in the first action; (iv) and the court's sense of equity after considering all the circumstances. In this instance, petitioner was denied the forum sought, no de novo hearing granted; technical litigation theory of petitioner was essentially ignored; petitioner was denied use of valuable evidence since no de novo or any other hearing was permitted; the court showed no sense of equity. See, Miller Brewing Co. v. Schlitz Brewing Co. 605 F. 2d 990 (CA. 7, 1979).

3. Whether the outcome of this case involve a significant national interest, the principles of liberty and freedom; and threaten to adversely impact the lives of hundreds of others similarly harmed by the abuse of power within the intelligent services of the United States, if a Writ of Certiorari is not granted?

When the power of the United States Justice Department is directed at private citizens and persons residing in this country in an unwarranted manner by spending millions of dollars over 14 years to carry out a campaign of terror to cause harm and inflict irreparable injury, such

abuse of power and violations of civil liberties and personal freedom presents a great national importance since the integrity of the United States Constitution become undermined.

In this scenario the agency in question, I.N.S. operatives carried out such elaborate campaign of rights deprivation against this petitioner and his children and in collaboration with the C.I.A. extended such violations of law through eleven countries and across three continents; despite irreparable injuries to this petitioner and his U.S. citizen minor children. I.N.S. intelligent operatives went as far as to induce federal judges at the lower court and the court of appeals to undermine the effect of such valuable statute such as the Administrative Procedure Act (A.P.A.), and also induced court clerks to illegally defeat the cause of justice while they continued to use covert techniques to inflict more irreparable injuries and attempt to entrap this petitioner.

There are hundreds of other young men and women of various nationalities who continuously become so targeted; often the ordeal originating while such victims were in college or U.S. institutions of higher learning. As with this petitioner, these atrocities were not precipitated by a criminal wrong-doing; no legitimate legal basis but a mere act of ill-judgement in a social conflict or dispute—students all over the world go through transitions of opinion and attitudinal changes; should a single act of difference in opinion justify the vengeance and full power of the United States justice department to injure and harm families; destroy marriages; brutalize children and cause 14 years of devastation, anguish and irreparable injuries?

Based on the horrendous magnitude of constitutional rights violation and deprivation of rights, this case poses such great national importance to merit the United States Supreme Court to grant a Writ of Certiorari to this petitioner; such writ will echo the voice of former Supreme Court Justices who by their courage and wisdom declared that the, ". . . constitution conferred as against the government the people's right to be let alone; . . . " and that ". . . Decency, security, and liberty alike demand that officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law

scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy," Justice Brandies. *Ex parte* Jackson, 96 U.S. 727, 24 L.Ed. 877 (1877); Olmstead v. United States, 277 U.S. 438, 478, 48 S. Ct. 564-72 L.Ed. 944. This case sets a unique precedence for relief to hundreds of other private individuals so harmed by the use of cold war era terror techniques by the United States Justice Department through the Intelligence Services.

CONCLUSIONS

For the foregoing reasons, petitioner respectfully requests this court to grant this petition for a Writ of Certiorari.

Respectfully submitted,

John Kojo Mensah, Pro se Petitioner
816 1/2 Fulton St.
Elkhart, IN 46514
Tel-Fax # (219) 296-6648

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

February 22, 1999

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. ILANA DIAMOND ROVNER, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

JOHN KOJO MENSAH,	) Appeal from the United States
Plaintiff-Appellant,	) District Court for the Northern
No. 98-3514 v.	) District of Indiana, South Bend
UNITED STATES OF AMERICA,	) Division.
Defendant-Appellee.	) No. 98-C-360
	) **Robert L. Miller, Jr.**, Judge

ORDER

On consideration of the "Brief in Support of Motion for Rehearing En Banc" (construed as a petition for rehearing with suggestion for rehearing en banc) filed by plaintiff-appellant on February 11, 1999, all of the judges on the panel have voted to deny rehearing and no judge in active service has requested a vote on the suggestion for rehearing en banc. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

February 11, 1999

By the Court:

JOHN K. MENSAH,	) Appeal from the United States
Plaintiff-Appellant,	) District Court for the Northern
No. 98-3514 v.	) District of Indiana, South Bend
UNITED STATES OF AMERICA,	) Division.
Defendant-Appellee.	) No. 98 C 360
	) Robert L. Miller, Judge.

Upon consideration of the **MOTION FOR REHEARING EN BANC-ORAL ARGUMENT**, filed on February 5, 1999, by the pro se appellant,

IT IS ORDERED that the motion, which the court construes as a motion for leave to file an oversized Petition for Rehearing with Suggestion for Rehearing En Banc, is **GRANTED**. The clerk is directed to file the tendered copies of the Petition for Rehearing With Suggestion for Rehearing En Banc **INSTANTER**, and to distribute a copy of the petition and this order to the assigned merits panel and to all judges of this court in regular active service.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

Submitted December 28, 1998*

Decided January 21, 1999

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. ILANA DIAMOND ROVNER, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

JOHN KOJO MENSAH,	)	Appeal from the United States
Plaintiff-Appellant,	)	District Court for the Northern
No. 98-3514 v.	)	District of Indiana, South Bend
UNITED STATES OF AMERICA,	)	Division.
Defendant-Appellee.	)	No. 98-C-360
	)	**Robert L. Miller, Jr.**, Judge

Plaintiff John Kojo Mensah believes the Central Intelligence

ORDER

Agency and the Immigration and Naturalization Service have pursued a "campaign of terror" against him and his family since 1985. Mensah alleges this campaign includes tactics such as arrest traps, plots of entrapment, acts of inducement, death threats and thermal imaging surveillance.

Mensah first brought suit in federal district court in 1997 under

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* This successive appeal has been submitted to the original panel under Operating Procedure 6(b). After examination of the briefs and the record, we have concluded that oral argument is unnecessary; accordingly the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a); Cir. R. 34(f).

a variety of federal civil rights laws. The district court dismissed the suit for failure to state a claim, a decision this Court affirmed by unpublished order. No. 97-4220. Two subsequent suits were dismissed in the district court. A fourth suit containing the same allegations invoked the Administrative Procedure Act (A.P.A.), 5 U.S.C. § 701 *et seq*. The district court again dismissed these claims and imposed sanctions of $100 under 28 U.S.C. § 1927 and Rule 11 of the Federal Rules of Civil Procedure. Mensah appeals the dismissal of his A.P.A. claim.

Mensah's failure to bring his A.P.A. claim in his original suit bars his current suit as *res judicata*. "Under *res judicata*, a final judgment on the merits of an action precludes the parties and their privies from relitigating issues that were or could have been raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94. The judgment of the district court is therefore AFFIRMED.

A cursory reading of the district court's opinion would have shown Mensah's appeal to be without merit. Accordingly, we order appellant John Kojo Mensah to show cause within fourteen (14) days of the date of this order why this Court should not impose sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure for filing a frivolous appeal.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JOHN KOJO MENSAH,	)	
Plaintiff,	)	
v.	)	Cause No. 3:98-CV-360RM
UNITED STATES OF AMERICA,	)	
Defendants	)	

MEMORANDUM AND ORDER

This is the most recent installment in a series of cases brought by John Kojo Mensah concerning his belief that federal agencies are engaged in sinister activities against him.[1] He alleges that the Central Intelligence Agency and the Immigration and Naturalization Service have orchestrated a "campaign of terror" against him since 1985. Mr. Mensah alleges that these agencies continue to terrorize him with tactics such as arrest traps, plots of entrapment, acts of inducement, death threats and thermal imaging surveillance.[2] Mr. Mensah seeks preliminary and permanent injunctive relief against the United States enjoining its agents from continuing these activities. The United States has filed a motion asking the court to appoint a guardian ad litem to represent Lucy and Lethia Mensah, Mr. Mensah's children whom he names as additional plaintiffs in this latest case. For reasons that follow, the court denies Mr. Mensah's request for injunctive relief, dismisses the complaint and orders Mr. Mensah to show cause why the court should not impose sanctions.

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[1] Mr. Mensah's previous lawsuits in this court include 97CV159RM and 98CV62AS.

[2] Mr. Mensah's allegations against the federal government are detailed in the memorandum and order issued by this court in 97CV159RM on October 21, 1997 (docket #67).

The complaint alleges the same facts against the same defendants that were alleged in 97CV159, 98CV62 and 98CV63. In light of the decision in Mr. Mensah's last case, the current complaint is vexatious, frivolous, duplicative, unfounded and improper. 28 U.S.C. § 1927 provides: "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." Rule 11 of the Federal Rules of Civil Procedure provides:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

Section (c) of Rule 11 authorizes the court to fashion a sanction "sufficient to deter repetition of such conduct" and may include the imposition of monetary fines..

These provisions are self explanatory, as is their apparent application to Mr. Mensah's filing under a new case number a case that the court has already dismissed. Therefore, the court

1. DISMISSES the complaint (filed July 14, 1998 (docket #1));

2. DIRECTS the clerk of the court to enter judgment in favor of the defendant; and

3. GRANTS Mr. Mensah 30 days to show cause why the court should not impose sanctions for violations of 28 U.S.C. § 1927 and Fed.R.Civ.P. 11 and why the court should not order Mr. Mensah to file no further cases in this court against these defendants based on these facts.

SO ORDERED.

ENTERED: August 17, 1998

/s/ Robert L. Miller, Jr., Judge
United States District Court